

VICTIM RESTITUTION ACT OF 1995

FEBRUARY 2, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 665]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 665) to control crime by mandatory victim restitution, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Victim Restitution Act of 1995”.

SEC. 2. MANDATORY RESTITUTION AND OTHER PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law” and inserting “shall order”; and

(ii) by adding at the end the following: “The requirement of this paragraph does not affect the power of the court to impose any other penalty authorized by law. In the case of a misdemeanor, the court may impose restitution in lieu of any other penalty authorized by law.”;

(B) by adding at the end the following:

“(4) In addition to ordering restitution to the victim of the offense of which a defendant is convicted, a court may order restitution to any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

“(A) the criminal episode during which the offense occurred; or

“(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.”;

(2) in subsection (b)(1)(B) by striking “impractical” and inserting “impracticable”;

(3) in subsection (b)(2) by inserting “emotional or” after “resulting in”;

(4) in subsection (b)—

(A) by striking “and” at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following new paragraph:

“(5) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and”;

(5) in subsection (c) by striking “If the court decides to order restitution under this section, the” and inserting “The”;

(6) by striking subsections (d), (e), (f), (g), and (h);

(7) by redesignating subsection (i) as subsection (m); and

(8) by inserting after subsection (c) the following:

“(d)(1) The court shall order restitution to a victim in the full amount of the victim’s losses as determined by the court and without consideration of—

“(A) the economic circumstances of the offender; or

“(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

“(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

“(A) the financial resources and other assets of the offender;

“(B) projected earnings and other income of the offender; and

“(C) any financial obligations of the offender, including obligations to dependents.

“(3) A restitution order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

“(4) An in-kind payment described in paragraph (3) may be in the form of—

“(A) return of property;

“(B) replacement of property; or

“(C) services rendered to the victim or to a person or organization other than the victim.

“(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

“(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution to each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

“(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution to victims required by the

order be paid to the victims before any restitution is paid to such a provider of compensation.

“(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

“(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

“(A) any Federal civil proceeding; and

“(B) any State civil proceeding, to the extent provided by the law of the State.

“(h) A restitution order shall provide that—

“(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

“(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—

“(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful; and

“(B) notify the court and the interested parties when an offender is 30 days in arrears in meeting those obligations; and

“(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.

“(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

“(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

“(k) An order of restitution may be enforced—

“(1) by the United States—

“(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

“(B) in the same manner as a judgment in a civil action; and

“(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

“(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.”.

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

“(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information

collected in the report of presentence investigation or in a separate report, as the court directs.”; and

(4) by adding at the end thereof the following new subsection:

“(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.”.

PURPOSE AND SUMMARY

The purpose of H.R. 665, the “Victim Restitution Act of 1995,” is to ensure that criminals pay full restitution to their victims for all damages caused as a result of the crime. To that end, the bill modifies current law to mandate that restitution be awarded by the court in most Federal criminal proceedings.

In addition to requiring that the court order restitution to the victim, the court is given the discretion to order restitution to other persons who were harmed physically, emotionally or financially by the criminals’s unlawful conduct.

The court is to determine the amount of restitution based on the full amount of a victim’s losses and is not to consider the offender’s economic status. Moreover, in determining the amount of restitution, the court is not to consider the victim’s right to other compensation from any other source, such as insurance proceeds or civil damages.

Court-ordered restitution is not to affect the victim’s eligibility for insurance until such court-ordered restitution has fully compensated the victim. If a victim seeks additional compensation through a civil action, any new award from such action is to be reduced by the amount of the criminal restitution order.

The Victim Restitution Act of 1995 makes compliance with the court-prescribed schedule of restitution payments a condition for probation or supervised release. The victim or offender may petition the court to modify a restitution order at any time.

BACKGROUND AND NEED FOR THE LEGISLATION

According to the Bureau of Justice Statistics, from 1973 to 1991, 36.6 million people in the United States were injured as a result of violent crime. In 1992, there were nearly 34 million victims of crime nationally. Each year, one in four households in the United States is victimized by one or more crimes. In 1991, crime against people and households resulted in an estimated \$19.1 billion in losses. Crime-related injuries typically amount for more than 700,000 days of hospitalization annually. The costs associated with crime—economic, physical and emotional—for individuals, families, and the country is enormous.

There has been significant progress over the last 15 years in addressing the needs of crime victims. Their voices are no longer missing from the national debate concerning criminal justice. In spite of this progress, however, additional reforms are needed. Under existing law, crime victims’ rights are still too often overlooked. Even though the law provides the means to address the rights of victims, the law does not, however, provide for a means to make victims whole.

H.R. 665, the “Victim Restitution Act of 1995,” is an important step forward in ensuring justice for the victims of crime and ac-

countability for convicted criminals. By requiring full financial restitution, the Act requires the offender to face the harm suffered by his victims and, to others harmed by his unlawful actions. Further, it strives to provide those who suffer the consequences of crime with some means of recouping the personal and financial losses resulting from crime.

COMMITTEE CONSIDERATION

On January 27, 1995, the Committee on the Judiciary met in open session and ordered reported the bill H.R. 665, as amended, by a voice-vote, a quorum being present.

VOTE OF THE COMMITTEE

The committee then considered the following amendment, which was adopted by voice-vote.

Mr. McCollum offered an amendment to provide that any restitution order include an amount reimbursing the victim for lost income relating to the victim's participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense. The amendment was adopted by voice-vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause a(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 665, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 1, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 665, the Victim Restitution Act of 1995, as ordered reported by the House Committee on the Judiciary on January 27, 1995. We estimate that enacting the bill would result in increased costs to the federal government of about \$5 million annually, subject to available appropriations. Because enactment of H.R. 665 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

H.R. 665 would require that federal courts order defendants to pay restitution to victims. Under current law, orders of restitution are optional. The bill also would make several other changes to the laws relating to restitution. Based on information provided by the Administrative Office of the United States Courts, CBO expects that enactment of this legislation would result in 10,000 to 15,000 additional orders of restitution annually. Each order of restitution would increase administrative expenditures of the courts by \$400 to \$500, so implementation of H.R. 665 would cost about \$5 million annually, assuming appropriation of the necessary amounts.

Enacting H.R. 665 would result in no costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 665 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 of the bill states the short title as the "Victim Restitution Act of 1995."

SECTION 2. MANDATORY RESTITUTION AND OTHER PROVISIONS

This section of the bill would amend several subsections of section 3663(a) of Title 18, United States Code.

New subsection (a)(1) requires federal judges to order persons convicted of crimes to make restitution to their victims. It also makes it clear that any other penalty imposed by the law for the offense may be ordered in addition to the restitution. In the case of misdemeanors, the court would continue to be authorized to impose restitution in lieu of any other penalty.

Section 2 of the bill also adds new subsection (a)(4), which authorizes the court to order the defendant to make restitution to any other person who was harmed physically, emotionally, or financially by the defendant's unlawful conduct. The harm must have occurred at some point during the entire criminal episode, or during the course of any scheme, conspiracy, or pattern of unlawful activity that is related to the offense. The prosecution, as is currently the case, has the burden of proving the harm of financial loss by a preponderance of the evidence at the sentencing hearing.

In addition to making restitution to victims mandatory, the bill would add new subsection (a)(5) to allow judges to consider, when establishing a restitution order, the indirect costs of a victim's lost income and the costs of necessary child care, transportation, and other expense incurred by virtue of the victim's participation in the investigation, prosecution, and sentencing for the offense, or any other related proceedings.

New subsection (d) provides that the restitution award is to be determined without considering the offender's economic circumstances, or the fact that the victim has or is entitled to receive compensation from insurance or from any other source (such as a state crime victims' compensation fund). In determining the payment schedule of the restitution awarded, however, the court is to consider the financial resources of the offender. The section also makes it clear that the court is to consider the projected earnings, any other income of the offender, and any other financial obligations of the defendant, including obligations to dependents, when establishing the schedule of any non-lump restitution payments. H.R. 665 allows the court to order restitution payments in the form of single, lump-sum payments; partial payments at specified intervals; or such in-kind payments that may be agreeable to both the victim and the offender. In-kind payments may be in the form of the return of property, the replacement of property, or services rendered to the victim, or to persons, or organizations other than the victim.

New subsection (e) of section 3663 gives the court the discretion to make either multiple offenders jointly and severally liable for payment of the full restitution award, or to apportion the restitution order among the various offenders.

New subsection (f) provides that if more than one victim has sustained a loss, the court must order that full restitution be made to each victim, but the court has the discretion to order different payment schedules with respect to each victim depending on a number of varying factors.

New subsection (g)(1) makes it clear that if the victim receives, or is entitled to receive, compensation from some other source (including insurance proceeds), the court is required to order that the restitution payment be made first to fully satisfy the victim's loss before any payments can be made to a third party.

Subsection (g)(2) is designed to ensure that victims are entitled to receive an amount equal to the greater of the restitution award or any other compensation to which they are entitled. The subsection expressly states that the restitution order will not affect the victim's rights against any other source or sources of compensation, including any insurance proceeds or civil damages.

Subsection (g)(3) requires that any amounts paid to a victim under a restitution order are to be set off against any recovery by the victim in a federal civil proceeding or any state civil proceeding (to the extent required by that state's law).

Subsection (h) requires the court to order that all restitution payments be made to an entity designated by the Director of the Administrative Office of the United States Court to make the restitution payments to the various victims. The subsection also requires the designated entity to keep appropriate records of those payments. It also requires offenders to report any change of address to that same entity. That entity is to notify the court if the offender falls 30 or more days behind in compliance with any restitution order.

New subsection (j) makes compliance with the restitution order a condition of any probation, parole, or other form of supervised release. It further provides that if the offender fails to comply with the restitution order, in any way, the court may revoke the defendant's probation, parole, or supervised release; hold the offender in contempt of court; enter a restraining order or injunction; or take any other action necessary to force the offender to comply with the court's restitution order. In fashioning the appropriate sanction, the court must consider the offender's employment status, earning ability, financial resources, willfulness in failing to comply with the restitution order, and any other circumstance that may bear on the defendant's failure to comply with the order of the court.

Subsection (k) provides that the United States and/or the victim may enforce the restitution order in the same manner as a judgment in a civil action.

Subsection (l) allows both the offender or the victim to move the court to modify the restitution order in light of a change in the economic circumstances of the offender. The motions to modify can be made at any time the restitution order is still in effect. A change in the economic circumstances of the victim is not a proper basis for any modification of the restitution order.

Section 2 also amends portions of section 3664 of Title 18, United States Code. Specifically, new subsection (a) of that section specifies that the court may require the probation service of the court to obtain pertinent information relating to the restitution order, such as the loss sustained by the victim, and the financial needs and earning ability of the defendant and the defendant's dependents. The information is to be included in the presentence report filed by the probation service.

Finally, new subsection (e) of section 3664 authorized the judge to refer any issues relating to a restitution award to a magistrate or special master for proposed findings of fact and recommendations as to disposition. The findings are subject to de novo review by the court.

AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 3, the "Taking Back Our Streets Act of 1995." This letter addressed the issues presented in H.R. 665 in pertinent as follows:

III. MANDATORY VICTIM RESTITUTION

Title III of H.R. 3 contains amendments that would make the issuance of a full order of restitution mandatory in all cases under the federal criminal code, and would otherwise strengthen the restitution statute. The amendments would preserve the court's authority to consider the offender's economic circumstances in specifying the manner and timing of payment, e.g., in setting up a payment schedule that is consistent with the offender's actual ability to pay. The Senate passed similar provisions in sec. 902 of the first version of H.R. 3355 that it passed in the 103d Congress, and in section 2003 of S. 1241 of the 102d Congress.

As we have previously stated, we support these provisions. *See* Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr., Detailed Comments at 14 (June 13, 1994). We believe strongly that all offenders should be forced to repay all their victims for the harm they have suffered.

On a technical level, we have a few recommendations concerning the formation of this proposal. For example, proposed new paragraph (5) in 18 U.S.C. 3663(b), relating to reimbursement of the victim for costs associated with participation in the investigation or prosecution, has already been enacted in a stronger form (including coverage of the victim's lost income) by section 40504 of the Violent Crime Control and Law Enforcement Act of 1994. We would be pleased to assist Congress in finalizing this proposal.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

* * * * *

§ 3663. Order of restitution

(a)(1) The court, when sentencing a defendant convicted of an offense under this title or section 46312, 46502, or 46504 of title 49, [may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law] *shall order*, that the defendant make restitution to any victim of such offense. *The requirement of this paragraph does not affect the power of the court to im-*

pose any other penalty authorized by law. In the case of a misdemeanor, the court may impose restitution in lieu of any other penalty authorized by law.

* * * * *

(4) *In addition to ordering restitution to the victim of the offense of which a defendant is convicted, a court may order restitution to any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—*

*(A) the criminal episode during which the offense occurred; or
(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.*

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, ~~impractical~~ *impracticable*, or inadequate, pay an amount equal to the greater of—

(i) * * *

* * * * *

(2) in the case of an offense resulting in *emotional* or bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) * * *

* * * * *

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; ~~and~~

(5) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

~~[(5)]~~ (6) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c) ~~[(If the court decides to order restitution under this section, the)]~~ The court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

~~[(d)]~~ To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

~~[(e)]~~(1) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of

restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

[(2) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in—

[(A) any Federal civil proceeding; and

[(B) any State civil proceeding, to the extent provided by the law of that State.

[(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

[(2) The end of such period or the last such installment shall not be later than—

[(A) the end of the period of probation, if probation is ordered;

[(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

[(C) five years after the date of sentencing in any other case.

[(3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

[(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General or the person designated under section 604(a)(18) of title 28 for transfer to such victim or person.

[(g) If such defendant is placed on probation or sentenced to a term of supervised release under this title, any restitution ordered under this section shall be a condition of such probation or supervised release. The court may revoke probation or a term of supervised release, or modify the term or conditions of probation or a term of supervised release, or hold a defendant in contempt pursuant to section 3583(e) if the defendant fails to comply with such order. In determining whether to revoke probation or a term of supervised release, modify the term or conditions of probation or supervised release, or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

[(h) An order of restitution may be enforced—

[(1) by the United States—

[(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

[(B) in the same manner as a judgment in a civil action; and

[(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.]

(d)(1) *The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—*

(A) *the economic circumstances of the offender; or*

(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the offender;

(B) projected earnings and other income of the offender; and

(C) any financial obligations of the offender, including obligations to dependents.

(3) A restitution order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

(4) An in-kind payment described in paragraph (3) may be in the form of—

(A) return of property;

(B) replacement of property; or

(C) services rendered to the victim or to a person or organization other than the victim.

(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution to each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution to victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(h) A restitution order shall provide that—

(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity

designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—

(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful; and

(B) notify the court and the interested parties when an offender is 30 days in arrears in meeting those obligations; and

(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.

(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

(k) An order of restitution may be enforced—

(1) by the United States—

(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

(B) in the same manner as a judgment in a civil action; and

(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

[(i)] (m)(1) A Federal agency shall immediately suspend all Federal benefits provided by the agency to the defendant, and shall terminate the defendant's eligibility for Federal benefits administered by that agency, upon receipt of a certified copy of a written judicial finding that the defendant is delinquent in making restitution in accordance with any schedule of payments or any requirement of immediate payment imposed under this section.

(2) Any written finding of delinquency described in paragraph (1) shall be made by a court, after a hearing, upon motion of the victim named in the order to receive the restitution or upon motion of the United States.

(3) A defendant found to be delinquent may subsequently seek a written finding from the court that the defendant has rectified the delinquency or that the defendant has made and will make good faith efforts to rectify the delinquency. The defendant's eligibility for Federal benefits shall be reinstated upon receipt by the agency of a certified copy of such a finding.

(4) In this subsection, "Federal benefit" means a grant, contract, loan, professional license, or commercial license provided by an agency of the United States.

§ 3664. Procedure for issuing order of restitution

[(a) The court, in determining whether to order restitution under section 3663 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

[(b) The court may order the probation service of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.]

(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

[(c)] *(b)* The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

[(d)] *(c)* Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

[(e)] *(d)* A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

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